

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

The Governors of: Connecticut, Maine
Massachusetts, New Hampshire, Rhode
Island, Vermont

Docket No. EL04-112-000

ISO New England Inc.

Docket No. ER05-134-002

ORDER ENCOURAGING FURTHER STAKEHOLDER DISCUSSIONS AND
DENYING REHEARING IN PART

(Issued July 7, 2005)

1. On June 25, 2004, as amended on January 11, 2005,¹ the Governors of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont (the Petitioners) submitted a Joint Petition for Declaratory Order to form a New England Regional State Committee. The Petitioners intend to form a non-profit corporation, the New England States Committee on Electricity (NESCOE) that will serve as the New England region's Regional State Committee. NESCOE will focus on developing and making policy recommendations related to resource adequacy and systems planning, and investigating and reporting to the New England Governors on policy questions concerning the possibility of creating a regional authority for siting of interstate transmission facilities. The Petitioners principally request that the Commission require ISO New England, Inc. (ISO-NE) and the New England participating Transmission Owners to make certain communications and to provide for funding of NESCOE through a regional tariff, as described below.

¹ Petitioners' January 11 filing was styled as a motion to lodge the amended Petition. The Commission treated this filing as an amended Petition by noticing it and providing a comment period. To avoid any possible confusion, we will hereby grant the motion to lodge.

2. We commend the Governors for their commitment to form a Regional State Committee. However, for the reasons discussed below, the Commission will defer acting on the petition for declaratory order at this time and encourage Petitioners to undertake consultations with other stakeholders to address issues raised in this proceeding. While Petitioners propose many goals consistent with our previous descriptions of Regional State Committees, this proposal would benefit from further discussion at the stakeholder level to gain greater consensus. Customers will benefit from this order because it encourages participation between the Petitioners and other market participants within the existing stakeholder framework. As a result, this enhanced stakeholder process will facilitate improvements in the market design in New England.

3. This order also addresses requests for rehearing of one aspect of an order issued on December 30, 2004 in Docket No. ER05-134-000.² In that order, the Commission rejected a proposed rate schedule to be used as a placeholder for a Regional State Committee to submit, justify, and collect its administrative costs, should such a committee be formed. This order clarifies the Commission's rejection of that rate schedule and provides further guidance for the ISO-NE and stakeholders in creating a funding mechanism for a Regional State Committee.

I. Background

4. On September 8, 2003, a proposal to create a Regional State Committee was approved by the New England Governors. On October 31, 2003, ISO-NE and seven New England Transmission Owners proposed, in the context of the formation of a Regional Transmission Organization (RTO), that a Regional State Committee be a part of the structure of ISO-NE. On March 24, 2004, the Commission approved the ISO-NE proposal subject to the fulfillment of certain requirements.³ Petitioners now inform the Commission through this proceeding of the intended scope of responsibilities of the planned Regional State Committee and seek Commission action "so that NESCOE will have the tools, standing, and resources to assume the leadership role anticipated by the Commission."⁴

² *ISO New England Inc.*, 109 FERC ¶ 61,383 (2004) (December 30 Order). The instant order responds to requests for rehearing of the Commission's decision in the December 30 Order to reject Schedule 5. All other rehearing issues will be addressed in an order to be issued at a later date.

³ *ISO New England Inc., et al.*, 106 FERC ¶ 61,280 (March 2004 Order), *order on reh'g*, 109 FERC ¶ 61,147 (2004).

⁴ Petition at 4.

5. On November 1, 2004, ISO-NE filed, pursuant to section 205 of the Federal Power Act, revised tariff sheets to collect its administrative costs for calendar year 2005. The filing included a proposed Schedule 5 to account for the possibility that a Regional State Committee would be formed in New England and will seek to justify and recover its costs through the ISO's tariff structure. In the December 30 Order, the Commission rejected the proposed rate schedule as unnecessary and premature, explaining:

The Commission does not believe that it is appropriate to provide a placeholder for the recovery of costs of a Regional State Committee that does not yet exist. We also believe that it is unnecessary for ISO-NE to recover any future costs it may incur for a Regional State Committee under a separate rate schedule; such costs should be included along with other regulatory costs in ISO-NE's budget.^{5]}

II. Petition

6. Petitioners seek a declaratory order that would:

- Require that the ISO-NE and the New England participating Transmission Owners (TOs) provide NESCOE with written notice of any proposed additions or changes to market rules or tariffs within a reasonable time before filing the proposal;
- Require that the ISO-NE and the TOs give NESCOE a reasonable opportunity to make determinations and offer comments regarding any proposed additions or changes to market rules and tariffs that affect matters within the scope of NESCOE's responsibility;
- Provide funding for NESCOE through a regional tariff administered by the ISO-NE and ultimately collected from all New England retail electricity customers; and
- Require the ISO-NE, the New England Power Pool (NEPOOL) and the TOs to file amendments to their respective Commission-jurisdictional tariffs and agreements to reflect the Commission's intentions in the resulting declaratory order.⁶

⁵ December 30 Order at P 46.

⁶ Petitioners originally sought two additional types of requirements. These were deleted in the amended petition, and need not be addressed in this order.

7. In support of the Petition, the Governors state that, when NESCOE majority determinations are submitted to the Commission, they anticipate that these determinations will be accorded deference by the Commission.⁷

A. Scope of NESCOE Responsibility

8. Petitioners propose that the scope of NESCOE jurisdiction, at the outset, should encompass at least two areas: resource adequacy and system planning and expansion. Petitioners state that NESCOE will also study and evaluate approaches to siting interstate transmission lines on a regional basis. Petitioners state that in the future, after consultation with other stakeholders, NESCOE could address such issues as security, fuel diversity, conservation, and the environmental impacts of power generation. Petitioners explain that the scope of NESCOE's responsibility could be expanded or contracted only through a unanimous vote of its members.⁸

B. The Role of NESCOE in Ensuring Adequate Resources

9. With respect to reserve margins, Petitioners state that NESCOE could provide a mechanism whereby the New England states can evaluate the appropriate degree of reliability risk and costs. Petitioners state that NESCOE would recommend policies designed to ensure that adequate resources are available to obtain a reliable electric system at a reasonable cost. Petitioners believe that the Regional State Committee offers an opportunity for the states to address the competing goals of limiting volatility in wholesale electricity prices and ensuring the development of sufficient resources to produce competitive pricing at all times. Petitioners state that in making its determinations, NESCOE would balance the various interests of generators, Transmission Owners, utilities, marketers, and customers, in addition to various public policy interests.

C. The Role of NESCOE in System Planning and Expansion

10. Petitioners state that the resource adequacy policies related to generation and demand-side resources alone may not be able to ensure regional electric reliability nor can they entirely eliminate persistent and costly congestion over transmission lines. Petitioners believe that, when the need for new transmission capacity is identified, regulatory considerations that generally do not exist for generation or energy efficiency come into play (particularly determinations by regulators of the need for the facility and approval of tariff adjustments to cover its cost). Petitioners state that

⁷ Amended Petition at 3.

⁸ The Petitioners note that NESCOE would make an informational filing with the Commission if NESCOE determines to expand the scope of its responsibilities.

these decisions require tradeoffs among a variety of regional policy goals, *e.g.*, determining whether the new lines will facilitate or impede the development of competitive generation and efficient markets and ensuring investments that are cost effective for customers. Petitioners state that NESCOE can recommend policies on transmission planning and expansion that will balance these policy goals. Petitioners also state that NESCOE would propose to this Commission the form of cost recovery treatment (*e.g.*, inclusion in regional or local transmission tariffs) that the states could support to enable projects to go forward.

D. The Role of NESCOE in the Siting of Interstate Transmission

11. Petitioners believe that most states are reluctant to cede state siting jurisdiction to a multi-state agency. However, Petitioners state that the New England States might benefit from the regional focus that a multi-state advisory agency could bring to developing and maintaining an efficient and reliable regional transmission system. Petitioners assert that an interstate siting solution could creatively incorporate the regional view without eliminating state siting authority. Therefore, the Petitioners state that NESCOE would study and evaluate approaches to the siting of interstate transmission lines on a regional basis. Petitioners state that any NESCOE recommendations on transmission siting would be sent to the New England Governors for their action.

E. NESCOE Input and Determinations

12. Petitioners state that, to ensure that the New England States are afforded an appropriate level of input in decision-making affecting the New England region, they seek to coordinate NESCOE's operations with ISO-NE's and the Transmission Owners' and deference from the Commission concerning NESCOE's determinations. Petitioners state that, absent exigent circumstances justifying an emergency filing, ISO-NE and the Transmission Owners should provide NESCOE with written notice of their intent to add or make changes to market rules or tariffs. Petitioners also state that ISO-NE and the New England TOs must give NESCOE a reasonable opportunity to submit its determinations to them regarding any proposed additions or changes to market rules and tariffs that affect matters within the scope of NESCOE's responsibility.

13. Petitioners state that NESCOE must also have the ability to initiate the Commission's consideration of policy changes if ISO-NE or the New England TOs do not take action within their respective spheres. Petitioners state that instances in which NESCOE submits a Majority Determination to change or add to market rules or tariffs necessary to carry out a policy on a matter within the scope of its responsibility, if ISO-NE or the New England TOs do not file a proposal at the

Commission within a reasonable time seeking to implement NESCOE's determination, NESCOE would file its determination under section 206 of the Federal Power Act.

F. NESCOE Funding and Governance

14. Petitioners request that the Commission order that NESCOE shall be funded by a regional tariff administered by ISO-NE and ultimately collected from all New England retail electricity consumers. Petitioners state that they will support the pass through of these costs in retail rates. The process envisioned by Petitioners is that: (1) NESCOE would prepare a budget each year following consultation with ISO-NE, NEPOOL and the Transmission Owners; (2) ISO-NE would include this separately identified amount as part of ISO-NE's annual administrative budget submission to the Commission; and (3) NESCOE would provide any justification required for its budget proposal.

15. Petitioners state that this funding approach will assure NESCOE's autonomy and its ability to make independent, unencumbered determinations. Petitioners explain that NESCOE will establish its budget based on its own assessment of the resources that will be necessary to assure a separate source of necessary information and analysis. Petitioners assert that because ISO-NE will simply act as the funding conduit and may not make substantive changes to NESCOE's identified requirements, NESCOE will not be subject to potential influence from ISO-NE based on the power of the purse.

16. Petitioners state that, for a determination to become a Majority Determination of NESCOE, it must pass two voting thresholds. Petitioners explain that NESCOE would first vote on a "one-state-one-vote" basis, and a motion would be successful if it received the affirmative support of at least four states out of six. Petitioners also explain that a second vote would be taken on a "proportionate consumption" basis, which would preclude one state from being able to prevent a motion from passing that otherwise had the support of five other states. Petitioners state that the scope of NESCOE's jurisdiction over subjects other than resource adequacy and system planning could be expanded (or contracted) only by unanimous agreement of the member states.

III. Notice of Filings and Responsive Pleadings

17. Notice of the petition for declaratory order was published in the *Federal Register*, 69 Fed. Reg. 41,467 (2004), with protests and interventions due on or before July 16, 2004. Timely motions to intervene raising no substantive issues were filed by Florida Power & Light Company, Select Energy, Inc., the New England Conference of Public Utilities Commissioners (NECPUC), and Exelon Corporation. Timely motions to intervene and protests were filed by: New England Consumer-

Owned Entities (Consumer-Owned Entities);⁹ Indicated Suppliers;¹⁰ the Connecticut Office of Consumer Counsel and New Hampshire Office of Consumer Advocate (Connecticut OCC and New Hampshire OCA); the Edison Electric Institute and Alliance of Energy Suppliers (EEI); ISO-NE; New England TOs;¹¹ and NEPOOL Participants Committee (NEPOOL). In addition, Northeast Energy Efficiency Partnerships, Inc. filed comments in support of the petition without moving to intervene.

18. The following filed motions to intervene out-of-time: Duke Energy North America, LLC (Duke); Constellation Power Source, Inc. and Constellation NewEnergy, Inc. (Constellation); the Attorney General of Rhode Island; NRG Companies (NRG); and the Electric Power Supply Association (EPSA). NRG and EPSA protest the filing.

19. On August 20, 2004, the Petitioners submitted a motion to submit an answer to the protests and an answer.

20. Notice of the motion to lodge the amended petition was published in the *Federal Register*, 70 Fed. Reg. 5990 (2005), with protests and interventions due on or before February 7, 2005. NEPOOL and NRG commented on or protested the motion,

⁹ The New England Consumer-Owned Entities are: Connecticut Municipal Electric Energy Cooperative; Massachusetts Municipal Wholesale Electric Company; Vermont Public Power Supply Authority; New Hampshire Electric Cooperative, Inc.; Chicopee Municipal Lighting Plant of the City of Chicopee, Massachusetts; Braintree Electric Light Department (Braintree); Reading Municipal Light Department (Reading); and Taunton Municipal Lighting Plant (Taunton).

¹⁰ Indicated Suppliers include: Calpine Corporation and Calpine Energy Services, L.P.; FPL Energy, LLC; Mirant Americas Energy Marketing, LP; Mirant New England, Inc.; Mirant Canal, LLC; Mirant Kendall, LLC; and PSEG Energy Resources & Trade LLC.

¹¹ The New England Transmission Owners are: Bangor Hydro-Electric Company; Central Maine Power Company; NSTAR Electric & Gas Corporation (on behalf of its operating affiliates); New England Power Company; Northeast Utilities Service Company (on behalf of its operating company affiliates); The United Illuminating Company; and Vermont Electric Power Company.

and Wellesley Municipal Light Plant (Wellesley) filed a motion to intervene. A group of municipals (Braintree, *et al.*)¹² filed a request for rejection in part or, in the alternative, protest and request for hearing.

21. Most commenters support the concept of a Regional State Committee for New England, particularly for its proposed role in transmission siting and the development of transmission infrastructure. EPSA, for example, believes that a Regional State Committee can help ensure that all parties work effectively and efficiently together to seek regional solutions on resource adequacy and facility planning. EPSA, Indicated Suppliers and other are concerned, however, about the proposed provision to allow NESCOE to expand its scope of responsibility unilaterally through a unanimous vote of its members. These parties contend that the Regional State Committee's purview must be clearly defined and approved prior to implementation; they assert that any expansion of responsibility should occur only after Commission approval.

22. Other objections are that Regional State Committee determinations should not be accorded any greater deference than other parties' positions, that the Joint Petition has not clearly explained how NESCOE will interact with other State representatives, and that the Joint Petition proposes responsibilities for NESCOE that exceed those in the White Paper.¹³ Braintree, *et al.*, argue that the Petitioners do not explain what "deference" or "great deference" mean, although Petitioners seek more weight for Regional State Committee position than for the positions of either the RTO or the region's Transmission Owners. Braintree, *et al.*, contend that there is no basis for the deference that is sought, and assert that the Petitioners and ISO-NE offer no appropriate limiting principle to circumscribe the deference to which they assert the Regional State Committee should be entitled.

VI. Discussion

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene in Docket No. EL04-112-000 serve to make the entities that filed them parties to this

¹² The municipal utilities include Braintree, Reading, Taunton, and Wellesley.

¹³ See, e.g., Consumer-Owned Entities at 17-24; Braintree, *et al.*, at 3, *citing* Remedying Undue Discrimination through Open Access Transmission Service and Standard Market Design, Notice of White Paper, Docket No. RM01-12-000, App. A (Apr. 28, 2003) (White Paper). The Commission's staff drafted the White Paper.

proceeding. We will grant the motions to intervene out-of-time filed by Duke, Constellation, NRG, EPSA, and the Attorney General of Rhode Island given their interest in this proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Petitioners' answer because it has provided information that assisted us in our decision-making process.

B. Formation of the Regional State Committee

25. We commend the New England Governors for their commitment to form a Regional State Committee, and we agree that the Committee has much to offer in formulating policies for the New England region. The Commission has already approved, in the March 2004 Order, an RTO organizational structure that contemplates the participation of a Regional State Committee in the stakeholder process.¹⁴ For example, section 3.04(h) of the ISO-NE Transmission Operating Agreement provides for Regional State Committee input into regional cost allocation section 205 filings. This assures the Regional State Committee the right to provide Transmission Owners with an alternate proposal (if the Transmission Owners and the Regional State Committee are unable to agree on changes to regional cost allocation provisions) which will be "considered on an equal footing" with the Transmission Owners' proposal.¹⁵ Additionally, section 3.04(h) provides for a stakeholder process for regional rate filings. These provisions, which were agreed to by the parties in the RTO proceeding, include requirements for notification to and consultation with the Regional State Committee in advance of making a section 205 filing.

26. A major concern of protesters in this proceeding is that many of Petitioners' controversial proposals have not been vetted through a stakeholder process. We believe that the best way to implement a new institution such as NESCOE which will be involved in many key transmission-related policy decisions for the region is through a consensual, voluntary process. Accordingly, we will encourage Petitioners to resolve these issues first through existing stakeholder procedures, and we will defer

¹⁴ See March 2004 Order, 106 FERC ¶ 61,280 at P 71-79.

¹⁵ ISO-NE Transmission Operating Agreement, filed in Docket No. RT04-2-000, at section 3.04(h).

acting on the petition for declaratory order at this time to allow these discussions to proceed. We will direct ISO-NE to submit status reports to the Commission regarding the progress of discussions on Regional State Committee issues, the first to be filed 90 days after the date of this order, and every 90 days thereafter until discussions are concluded.

C. Regional State Committee Funding

Comments

27. ISO-NE contends that a separate Regional State Committee budget proposal should contain rate recovery provisions. In addition, the New England TOs and the ISO-NE argue that the Regional State Committee budget should be developed through a stakeholder process.

28. ISO-NE states that it has no objection to collecting NESCOE's revenue requirements from RTO customers, as an accommodation to NESCOE, but seeks clarification from the Commission that the NESCOE tariff and budget shall be separate and distinct from the ISO-NE's self-funding mechanisms and budget, and that the Commission's evaluation of NESCOE's proposed budget and recovery mechanism will be separate from its evaluation of the ISO-NE's proposed budget and recovery mechanism. ISO-NE states that it is concerned that joint consideration by the Commission of the funding of the ISO-NE and NESCOE could delay and compromise the ISO-NE's ability to collect its required revenues and could threaten the ISO-NE's ability to carry out its mission.

29. Further, ISO-NE requests that the Commission determine that NESCOE, and not the ISO, will be required to demonstrate the justness and reasonableness of the Regional State Committee budget and the rate design used to collect the Regional State Committee revenue requirement. Moreover, ISO-NE and the New England TOs argue that NESCOE should be required to submit its budget to the ISO-NE and RTO stakeholders in advance of its submission to the Commission, in order to obtain ISO-NE and stakeholder input.

30. Consumer-Owned Entities, Connecticut OCC and New Hampshire OCA, NEPOOL, NRG and Indicated Suppliers raise funding concerns and argue that the retail costs should not be collected under an RTO tariff. Consumer-Owned Entities contend that there is no proposal presented here by an RTO to include Regional State Committee expenses in the RTO's budget, and that the White Paper offers no support for recovering such expenses through a wholesale tariff where (as here) the RTO operates on a non-profit basis and has no funds of its own with which to reimburse the

out-of-pocket expenses referenced in the White Paper. Consumer-Owned Entities argue that the Regional State Committee is not proposing any real budgetary process with respect to ISO-NE customers' involuntary funding of Regional State Committee activities through the RTO tariff.

31. In response to the amended Petition, Braintree, *et al.*, argue that state-level political judgments and public policy balancing – the types of activities promised to be offered by the proposed Regional State Committee – represent a class of matters that the Commission has consistently held are not subject to cost recovery through the charges applicable under wholesale transmission tariffs, and should instead be the subject of cost recovery under state-supervised retail tariffs.

32. Consumer-Owned Entities and others contend that there is no limit on Regional State Committee billings to wholesale customers, and the Joint Petition states that technical support for NESCOE members may require expertise in engineering, economics, legal and policy analysis, regional planning, and public information, all of which will apparently be siphoned from wholesale customers. These parties argue that there is nothing that justifies making the Regional State Committee a roving commission for mandates that the States themselves have not chosen to fund by the conventional and accepted means of taxation or utility assessments. NRG asserts that, if NESCOE desires to conduct autonomous studies to critique the technical analyses of ISO-NE, the states should fund such studies and collect the costs as they are permitted to through their usual sources of funding. In response to the amended Petition, Braintree, *et al.*, contend that compelled funding at the wholesale level interferes with the ability of state legislatures to control the activities of state agencies through funding decisions associated with the traditional means of funding those agencies.

33. NEPOOL and others argue that there is no basis under the Federal Power Act to require involuntary funding of NESCOE's activities by ISO-NE Tariff customers. Indicated Suppliers assert that, in the event that the Commission accepts this funding mechanism, however, the Commission should state explicitly that Network Load should bear these expenses pursuant to a tariff on file with the Commission and subject to its review, since NESCOE would ostensibly represent the interests of these constituents. In response to the amended Petition, NEPOOL contends that the Petitioners have failed to consult with NEPOOL – the organization that represents all of the sectors of the wholesale electric industry in New England – prior to filing this Amended Petition, while at the same time seeking special consultative rights for themselves and funding within the RTO arrangements.

34. Petitioners assert in their answer that, for NESCOE to maintain its independence, ISO-NE, and the Transmission Owners should not have a veto over planned NESCOE expenditures, thereby potentially influencing the substance of NESCOE's determinations. Petitioners state that NESCOE will need to have separate resources to conduct its own analyses and to present its own positions. Petitioners contend that, nevertheless, any party will have the right to challenge NESCOE's budget requests as excessive, duplicative, or otherwise unjust and unreasonable. Petitioners argue that NESCOE will develop budget procedures and its annual budget with the RTO, NEPOOL, and the Transmission Owners, and the Commission will finally approve NESCOE's budget separately from the ISO-NE budget. Petitioners contend that all of these mechanisms will ensure that NESCOE does not have the "blank check" that some protesters apparently fear.

Related Requests for Rehearing in Docket No. ER05-134-002

35. ISO-NE, NEPOOL, and a group of municipalities (the Municipals)¹⁶ filed requests for rehearing regarding the December 30 Order's rejection of Rate Schedule 5.¹⁷

36. ISO-NE objects to the Commission's rejection of proposed Schedule 5. It seeks clarification, or, in the alternative, rehearing of the "apparent requirement that the ISO include the costs of a Regional State Committee in the ISO's core operating budget in a manner that would require the ISO to justify the budget of a separate, purposely independent organization."¹⁸ Initially, ISO-NE argues that its proposed Schedule 5 should not be rejected because, as filed, it could impose no cost, burden or harm on any customers. Further, ISO-NE asserts that a finding that Schedule 5 is "unnecessary and premature" does not render it unjust and unreasonable; as such, it is lawful and must be accepted for filing.. More substantively, ISO-NE asserts that it cannot attest to the level of, or need for, costs incurred by the Regional State Committee, and argues that the Regional State Committee's costs should not be included in ISO-NE's core operating budget. Rather, ISO-NE asks the Commission to recognize the two entities' separate corporate identities and to allow the Regional State Committee's costs to be recovered under a separate schedule so the ISO could simply act as a funding conduit. ISO-NE concludes:

¹⁶ The Municipals include the Massachusetts Municipal Wholesale Electric Company, Braintree, Reading, Taunton, and Wellesley.

¹⁷ These parties and others also sought rehearing of other aspects of the December 30 Order. Those issues were addressed in a separate order issued on April 19, 2005. *ISO New England Inc.*, 111 FERC ¶ 61,096 (2005).

¹⁸ ISO-NE rehearing at 1.

Any amount of the RSC's budget not found just and reasonable by the Commission could be excluded from the ISO's budget, yet the ISO might still be obligated to pay the full amount billed to it by the RSC. This is clearly untenable.^{19]}

37. NEPOOL and the Municipals support the Commission's finding that Schedule 5 was premature but object to the idea of including the Regional State Committee's costs along with other regulatory costs in ISO-NE's budget. The Municipals argue that this dictum from the December 30 Order is unnecessary and contrary to law. Because the costs incurred by the Regional State Committee are not necessary to ISO-NE's provision of service to its customers and are not "regulatory costs," the Municipals charge that the ISO's customers should not have to reimburse those costs.

38. NEPOOL similarly argues that Regional State Committee costs should not be forced to be paid by ISO-NE "and transformed thereby into ISO-NE expenses."²⁰ NEPOOL notes that ISO-NE's budget process included in the Participants Agreement does not reflect agreement for participants to pay the costs of a Regional State Committee for the region and states that the issue of Regional State Committee funding is not ripe for Commission consideration because no proposal has been presented for discussion among NEPOOL stakeholders and there has been no agreement as to necessary changes in the RTO governing documents. NEPOOL complains that if the Commission prematurely concludes that ISO-NE should be required to cover these costs, then "the Commission would deprive the participants of their right to provide meaningful input into both the budget and the cost allocation that could affect them directly."²¹

Commission Response

39. In response to Braintree, *et al.*'s argument that cost recovery is unprecedented, we note that funding for two existing Regional State Committees, the Organization of MISO States (OMS), and the Southwest Power Pool's Regional State Committee (SPP), are budgeted through ISOs/RTOs. Specifically, a budget is prepared by the

¹⁹ ISO-NE rehearing at 5-6.

²⁰ NEPOOL rehearing at 4.

²¹ *Id.* at 5.

OMS or SPP Regional State Committee and presented to the respective ISO Board of Directors for approval.²² If New England participants agree to a similar mechanism, then parties would have input as to NESCOE's budget, and ISO-NE's Board would have final approval. Such a process could relieve concerns regarding ISO-NE's independence and its ability to justify the proposed budget.

40. Any cost recovery mechanism agreed to by the parties should result in a budget establishing reasonable costs. This budget should be transparent and indicate clearly the anticipated, future costs associated with the establishment and operation of NESCOE, identified separately from those of ISO-NE. This would be possible by including NESCOE's budget as a line item in ISO-NE's annual filing to recover its administrative costs. Other arrangements may also be acceptable, but we do not believe that a separate schedule is necessary.

41. Accordingly, at this time we deny rehearing of our rejection of ISO-NE's Schedule 5. We reiterate our finding that the proposed Schedule 5 is premature. Because a funding mechanism for NESCOE has not been deliberated by the participants in New England, there is no certainty that a separate schedule will eventually be agreed upon and utilized. In response to ISO-NE's assertion that we may not reject a rate filed under section 205 of the Federal Power Act unless it is found to be unjust and unreasonable, we observe that the Commission has rejected tariff provisions as premature in other instances.²³ Further, because the Commission is not ruling on any particular funding arrangement at this time, we will dismiss additional rehearing arguments as speculative and not yet ripe for decision.

42. We encourage the parties in this proceeding to reach a mutually agreeable resolution of all issues surrounding the creation of this Regional State Committee, and if the parties conclude, in the context of a global agreement, that the best manner of presenting NESCOE's budget to the Commission is as a separate schedule within ISO-NE's administrative cost filing, then we may reconsider our holding.

²² See OMS Funding Agreement, available at www.misostates.org/OMSFundingAgreement.pdf; *Southwest Power Pool, Inc.*, 105 FERC ¶ 61,003 (2004) (accepting Section 7.2 of SPP's bylaws).

²³ See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,280 at P 150, *order on reh'g*, 105 FERC ¶ 61,147 (2003); *El Paso Natural Gas Company*, 107 FERC ¶ 61,057 (2004) (rejecting filings as premature where Commission review would not be productive); *PJM Interconnection, L.L.C.*, 97 FERC ¶ 61,307 (2001) (rejecting filings as premature where changes would affect provision pending in other dockets).

The Commission orders:

(A) The Commission hereby defers action on the petition for declaratory order until completion of further stakeholder discussions, as discussed in the body of this order.

(B) ISO-NE is hereby directed to submit reports on the status of the stakeholder discussions every 90 days, as discussed in the body of this order.

(C) The requests for rehearing of the issues discussed above are hereby denied.

(D) The Petitioners' motion to lodge is hereby granted.

By the Commission. Commissioner Kelly concurring with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

The Governors of: Connecticut, Maine,
Massachusetts, New Hampshire, Rhode
Island, Vermont

Docket No. EL04-112-000

ISO New England Inc.

Docket No. ER05-134-002

(Issued July 7, 2004)

KELLY, Commissioner, *concurring*:

This order defers acting on the joint petition for declaratory order filed by the Governors of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont to form a New England Regional State Committee. The order finds that the Governors' proposal would benefit from further discussion at the stakeholder level to gain greater consensus. Although I do not object to using the existing ISO-NE stakeholder framework as a forum for discussion, I would have preferred that the Commission act on the proposal at this time.

Sudeen G. Kelly